

# UNITEHERE!

1775 K STREET, NW, SUITE 620, WASHINGTON, DC 20006 • TEL (202) 393-4373 • FAX (202) 223-6213 • WWW.UNITEHERE.ORG

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

Re: “Capital Plans” (RIN 7100-AD 77)

Dear Ms. Johnson,

This letter constitutes comments on the Notice of Proposed Rulemakings issued by the Board of Governors of the Federal Reserve complementing the Dodd-Frank Wall Street Reform and Consumer Protection Act. These comments are submitted on behalf of UNITE HERE.

UNITE HERE represents 250,000 workers throughout the U.S. and Canada who work in the hotel, gaming, food service, manufacturing, distribution, laundry, and airport industries. UNITE HERE supports the legislative intent of Dodd-Frank to reduce risk and ensure the long term stability of the financial system. It is critical that rules adopted by the Federal Reserve effectively promote this aim.

The Proposed Rule would require large bank holding companies (those with over \$50 billion in assets) to submit annual capital plans to the Federal Reserve. UNITE HERE supports this proposal. We believe such capital plans are especially necessary at US-domiciled bank holding companies that are subsidiaries of foreign banks and have therefore not been subject until recently to US minimum capital and leverage requirements. The Rule would explicitly “apply to any U.S.-domiciled bank holding company subsidiary of the foreign bank or foreign banking organization that meets the proposal’s size threshold.” In principle, the Rule will help ensure that all large bank holding companies, including those owned by foreign firms, remain a source of strength for US bank depositors and the financial system writ large.

As of March 31, 2011, four bank holding companies that are subsidiaries of foreign bank organizations met the \$50 billion in assets threshold and would, consequently, be subject to the Proposed Rule.<sup>1</sup> But we are concerned that recently reported maneuvers by several of these firms may allow them to sidestep the Proposed Rule, at least as it is currently proposed. A reorganization plan embarked upon by one institution—Taunus Corporation—is of particular concern.

Taunus Corporation, a bank holding company subsidiary of Deutsche Bank AG, is the largest foreign owned bank holding company now operating in the United States. As of March 31, Taunus held over \$396 billion in total assets, making it the eighth largest BHC in the United States.<sup>2</sup> It is the parent

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<sup>1</sup> Federal Reserve, *Top 50 BHCs*, (March 31, 2011). Available at <http://www.ffiec.gov/nicpubweb/nicweb/Top50Form.aspx>

<sup>2</sup> Ibid.

company of Deutsche Bank Securities Inc. (one of the largest US broker dealers), Deutsche Bank Trust Company Americas (a US depository bank), and a number of other corporate finance and holding companies which operate in the United States.

Through Taunus, Deutsche Bank was a major contributor to the financial crisis. At the peak of the mortgage bubble, between 2005 and 2008, Deutsche Bank Securities Inc. issued over \$85 billion in private label securitizations and \$71 billion through whole loan sales.<sup>3</sup> It acquired two subprime mortgage originators with the expressed intention of funneling “a steady stream of product into the mortgage capital markets.”<sup>4</sup> It was later revealed that Deutsche Bank’s top CDO trader privately disparaged certain Deutsche sponsored mortgages as “crap” or “pigs,” that Deutsche often ignored ratings by its own due diligence firms on the quality of these mortgages, and that Deutsche failed to disclose these risks to investors.<sup>5</sup>

When the mortgage market crashed, many Deutsche Bank investors and clients who had invested in mortgage linked synthetic collateralized debt obligations (CDOs) faced heavy losses. Deutsche Bank and its subsidiaries have faced litigation related to losses in these securities.<sup>6</sup>

Deutsche Bank’s part in the foreclosure crisis is also felt by communities across the United States. In its role as trustee, Deutsche Bank National Trust Company has foreclosed on thousands of US homes across the United States.<sup>7</sup> Some of these homes have been neglected or fallen into disrepair, further destabilizing neighborhoods.<sup>8</sup>

Deutsche Bank has also been a major beneficiary of Federal Reserve programs aimed to stabilize the financial system during the crisis. Specifically:

- As one of the largest counterparties of failed insurer AIG, Deutsche Bank received \$11.8 billion of the funds used to bail out AIG.<sup>9</sup>
- The Federal Reserve made emergency low-cost funds widely available to foreign as well as US member institutions through its discount window. Deutsche Bank was the second heaviest user of such funds, borrowing more than \$2 billion.<sup>10</sup>

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<sup>3</sup> Deutsche Bank, *SEC Form 20-F*, (March 15, 2011), F-134.

<sup>4</sup> Deutsche Bank Press Release, *Deutsche Bank Completes Acquisition of MortgageIT Holdings*, (January 3, 2007) available at [http://www.deutsche-bank.de/presse/en/content/press\\_releases\\_2007\\_3312.htm#print](http://www.deutsche-bank.de/presse/en/content/press_releases_2007_3312.htm#print)

<sup>5</sup> US Senate Permanent Subcommittee on Investigations, “Wall Street and the Financial Crisis: Anatomy of a Financial Collapse,” April 13, 2011, p.331-332; Testimony of Vicki Beal, Senior Vice President, Clayton Holdings before the Financial Crisis Inquiry Commission, September 23, 2010. See, in particular, “All Clayton Trending Reports,” 1<sup>st</sup> Quarter 2006-2<sup>nd</sup> Quarter 2007, available at [http://fcic-static.law.stanford.edu/cdn\\_media/fcic-testimony/2010-0923-Clayton-All-Trending-Report.pdf](http://fcic-static.law.stanford.edu/cdn_media/fcic-testimony/2010-0923-Clayton-All-Trending-Report.pdf).

<sup>6</sup> Deutsche Bank, *Annual Review 2010*, “Notes to the Consolidated Balance Sheet,” (March 31, 2011), p.286.

<sup>7</sup> Christoph Pauly and Thomas Schulz, “‘America’s Foreclosure King’ How the United States Became a PR Disaster for Deutsche Bank,” *Spiegel Online*, June 10, 2010. Available at <http://www.spiegel.de/international/business/0,1518,druck-699754.00.html>

<sup>8</sup> See, for example, Robert Gearty, “Banks Default on Duty, let foreclosed homes become eyesores – and disregard fines,” *NY Daily News*, July 24, 2011. Edvard Pettersson, “Deutsche Bank Sued by City of Los Angeles for Evicting Low Income Tenants,” *Bloomberg*, May 4, 2011. Steve Schifferes, “Foreclosure Wave Sweeps America,” *BBC News*, November 5, 2007.

<sup>9</sup> “German and French banks got \$36 billion from AIG bailout,” *Business Week*, March 15, 2009.

<sup>10</sup> “Foreign Banks tapped Fed’s Secret Lifeline Most at Crisis Peak,” *Bloomberg*, April 1, 2011.

- The Federal Reserve also created the Term Asset-Backed Securities Lending Facility, which allowed banks to use their assets, including troubled or hard-to-value assets, as collateral for short term loans. Deutsche Bank was the largest user of the program, sending the Fed more than \$290 billion worth of mortgage securities.<sup>11</sup>

Despite the generous support of US taxpayers, Taunus remains undercapitalized. As of March 31, 2011, due to write downs and the deduction of deferred tax assets, Taunus held negative Tier 1 capital. It had a Tier 1 leverage ratio of -1.17% and a Tier 1 risk-based capital ratio of -5.3%.<sup>12</sup> According to the *Wall Street Journal*, Taunus Corporation will need as much as \$20 billion to meet all of the applicable capital and leverage ratios that will apply to BHCs when the Collins Amendment is fully phased-in by 2015.<sup>13</sup>

However, rather than taking the steps necessary to raise capital, Deutsche Bank is attempting a reorganization that it hopes will effectively exempt the bank from new capital requirements.<sup>14</sup> The proposed restructuring has two steps:

1. Deutsche Bank will separate its depository banking subsidiary from Taunus and make it a direct subsidiary of Deutsche Bank AG in Germany. This move will mean that Taunus is no longer the parent company for any deposit-taking banks though it will still control a broker dealer, a corporate finance arm, and other companies. Taunus will then deregister as a bank holding company.
2. Deutsche will consolidate the remaining portions of Taunus with Deutsche Bank, New York Branch, a direct, non-bank holding company arm, solely for tax purposes. This will allow Deutsche to avoid the potentially higher tax burden that would otherwise result from the Taunus reorganization.

The stated intent of this reorganization is to exempt Taunus from capital requirements (Basel II, Basel III and the Collins Amendment of the Dodd Frank Act).<sup>15</sup> But presumably, none of the restructured entities would be subject to the Proposed Rule (submission of capital plans) either, because they would not be bank holding companies.

Meanwhile, the restructuring (if approved by the IRS) manages to preserve the tax benefits and, implicitly, the Federal Reserve support that results from the bank's *de facto* position as a too-big-to-fail financial institution. Restructurings executed solely to circumvent the new capital requirements undermine the purpose of the Proposed Rule and the integrity of the new regulatory regime envisioned by Dodd-Frank.

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<sup>11</sup> "Fed Opens Books, Revealing Foreign Megabanks Were Biggest Beneficiaries," *Huffington Post*, January 31, 2011.

<sup>12</sup> Taunus Corporation. *Federal Reserve Form FR Y-9C: Consolidated Financial Statement for Bank Holding Company*, March 31, 2011.

<sup>13</sup> David Enrich, Laura Stevens, and Alexandra Berzon, "Deutsche Maneuvers Around New Law," *Wall Street Journal*, April 13, 2011.

<sup>14</sup> *Ibid.*

<sup>15</sup> Deutsche Bank AG and Deutsche Bank Financial LLC, *Joint Report of the Management Board of Deutsche Bank and the Board of Managers of Deutsche Bank Financial LLC on a Partial Profit and Loss Transfer Agreement between Deutsche Bank AG and Deutsche Bank Financial LLC in Accordance with Section 293a of the German Stock Corporation Act*, March 30, 2011.

In light of this concern, UNITE HERE recommends that the Proposed Rule be expanded to include the significant non-bank financial entities that were affiliated with foreign-owned bank holding companies as of the passage of the Dodd-Frank legislation. Alternately, the Federal Reserve could simply refrain from approving Deutsche Bank's proposed restructuring. Either approach would be consistent with the broad goals of Dodd-Frank, as well as recent regulations adopted by the Federal Reserve. The establishment of Risk-Based Capital Standards, for instance, applies to "insured depository institutions, depository institution holding companies, and *nonbank financial companies supervised by the Federal Reserve*." (emphasis added) <sup>16</sup> Either approach would also be consistent with the "Hotel California" provision of the Act, which prevents institutions that received TARP funds from reorganizing simply to escape provisions of the Act. Although Deutsche Bank did not receive direct funding from TARP, it was nevertheless one of the largest beneficiaries of the Federal Reserve's panoply of post-crisis assistance programs.

We appreciate the opportunity to provide comments to the Board regarding the Proposed Rule, and we would be pleased to discuss any questions the Board might have with respect to these comments. Please feel free to contact me at (202)661-3681 with any questions.

Sincerely,

Marty R. Leary

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<sup>16</sup> "Risk-Based Capital Standards: Advanced Capital Adequacy Framework—Basel II; Establishment of a Risk-Based Capital Floor." 12 CFR §§ 208,225 (2011).